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PAULEY PETERSEN & ERICKSON			CALABRESE, MICHAEL A	
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HOFFMAN ESTATES, IL 60169				

  

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/586,574	HARTEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL CALABRESE	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 January 2010.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 and 7-32 is/are pending in the application.

4a) Of the above claim(s) 21-23 and 29 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5,7-20,24-28 and 30-32 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

### **DETAILED ACTION**

1. The Amendment filed on January 21, 2010 has been received. Claims 1-5 and 7-32 remain pending in the application, with Claims 21-23 and 29 withdrawn from further consideration.
2. The previous drawing objection has been withdrawn, and the U.S.C. 112 1<sup>st</sup> and 2nd paragraph rejections, as well as the previous claim objection have been withdrawn in light of Applicant's amendment.

### ***Specification***

3. The substitute specification filed January 21, 2010 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: There appears to be no statement explicitly stating the substitute specification includes no new matter. The statement that no new matter has been added to the claims is insufficient to meet the requirements of 37 CFR 1.125 (page 18, last line of reply). It should be noted, however, that if this issue was to be rectified, it appears the center opening is misnumbered 21.1 on Page 13, Line 7 (appears to be 21.2; See Figure 3), Figure number 7b is mislabeled Figure number 1b on Page 17, Line 3, and the "fastening edges" is mislabeled 22 in Page 18, Line 5 in the substitute specification not entered filed on January 21, 2010.
4. A substitute specification or correction of the deficiencies of the already filed substitute specification is required (without the claims) pursuant to 37 CFR 1.125(a) because the specification is replete with grammatical errors. Please see the previous office action for guidelines pertaining to a substitute specification.

***Claim Objections***

5. Claims 4, 5, and 11 are objected to because of the following informalities:
6. As for Claim 4, it appears the word "are" in Line 5 of the claim should be deleted or the word "which" be added preceding the word "are".
7. As for Claim 5, it is unclear if the at least one row of fastening receivers is to be cut into *each* of the beveled lateral legs.
8. As for Claim 11, it is suggested the word "to" in Line 5 be changed to "thereto".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
10. Claims 1-5 and 7-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
11. As for Claim 1, it is unclear if the plate-shaped cover elements referred to in Line 11 of the Claim are present in the configuration wherein the vertical frames are connected to the cabinet rack as seen in Figure 6. Further explanation (including support from the disclosure) is requested. As the claim refers to the situations where the vertical frames (Lines 9-11) are 1) connected to the cabinet rack (as seen in Figure 6) or alternatively 2) connected to the plate-shaped cover elements (as seen in Figure 7), the claims will be treated as best understood. Also, the position is taken that any corner connectors are not present in the configuration wherein the vertical frames are

attached to the plate-shaped cover elements. This problem is also present in Claim 32. Since the claims are drawn to a kit, prior art containing the assembly of parts of either alternative is sufficient to meet the claims since the claims are not drawn to a method of assembly but merely a kit of piece capable of alternative assemblies.

12. As for Claim 3, it is unclear as to what Applicant regards as the "outer receptacle". Is it Applicant's intention to define the outer receptacle as the recessed indentation at the corners of the switchgear cabinet (as seen in Figures 4 and 6)? Also, is there some purpose for the indentation to be defined as a "receptacle"?

13. Also in Claim 3, it is unclear if the "solid bottom frame" of Line 3 is the same frame as "a bottom frame" of Claim 1, Line 17.

14. As for Claim 11, it is unclear if the "a cabinet door" is the same cabinet door found in Line 19 of Claim 1.

15. As for Claim 13, it is unclear if the bottom frame found in Line 2 is the bottom frame described in Line 17 of Claim 1 or the bottom frame found in Line 3 of Claim 3.

16. Also in Claim 13, it is unclear if the corner connectors found in Lines 5 and 6 are the same corner connectors found in Line 4 of Claim 3.

17. As for Claim 15, it is unclear if the bottom frame found in Line 2 is the same as the bottom frame described in Line 17 of Claim 1 or the bottom frame found in Line 3 of Claim 3. Claim 17 also contains this problem.

18. The remaining claims are indefinite because they depend from indefinite claims.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 1-2, 24-25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek (United States Patent No. 6,036,290) in view of Whipps (United States Patent No. 3,563,627).

21. For the purposes of this examination, the position is taken that Lines 12 and 13 of Claim 1 refer to the (intended use) configuration wherein the vertical frames are connected to the cabinet rack and Lines 14-18 refer to the alternative (intended use) configuration wherein the vertical frames are connected to the plate-shaped cover elements.

22. As for Claim 1, as best understood, Jancesek is cited for teaching a switchgear cabinet, comprising: a cabinet rack made of four horizontal broad struts (42a, 42c, 44a, 44c), four horizontal depth struts (42b, 42d, 44b, 44d), and four vertical frame legs (40a-d) of a preset width, a preset depth and a preset height, plate-shaped cover elements (28, 30), vertical frames (52's See Figure 9) made of two vertical profiled frame elements (54) and two horizontal broad frame struts (62), connectable to the cabinet rack, and connected with the depth struts (42b, 42d, 44b, 44d) and at least one cabinet door (24; See Figures 1 and 6-8) beveled on a circumference (bevel can be seen in Figures 6-8).

23. Jancesek does not explicitly state the plate-shaped cover elements having on two opposite sides fastening edges beveled at right angles with at least one row of fastening receivers, and the door hinged to the plate-shaped cover elements.

24. Whipps is cited for teaching a switchgear cabinet having plate-shaped cover elements (12, 80) having on two opposite sides fastening edges (46, 82) beveled at right angles with at least one row of fastening receivers (48, 86; See Figure 1) and a door (30) hinged to the plate-shaped cover elements (12, 80).

25. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek so as to include on the cover two opposite sides fastening edges beveled at right angles with at least one row of fastening receivers, and to hinge the door to the plate-shaped cover elements as taught by Whipps in order to further protect and reinforce the bottom frame of the cabinet and to place less stress on the cabinet frame by supporting the weight of the door on the bottom cover.

26. As for Claim 2, as best understood, Jancesek is cited for further teaching the horizontal broad struts (42a, 42c, 44a, 44c), the horizontal depth struts (42b, 42d, 44b, 44d), and the vertical frame legs (40a-d) of the cabinet rack are formed as sections of respectively identical profiled elements fixedly connected with each other in corner areas of the switchgear cabinet rack by corner connectors (46).

27. As for Claim 24, Jancesek is cited for further teaching the vertical profiled frame elements (54) have a profiled base side (See Figures 3A-B) with at least one row of fastening receivers (See Figures 3A-B) which terminate with the front faces of the

horizontal broad vertical struts (62; See Figure 9), and lateral legs are beveled off on both sides of the profiled base side which are oriented to the longitudinal sides of the associated horizontal broad frame (62) struts of the vertical frames (52) and are connected.

28. As for Claim 25, Jancesek is cited for further teaching the horizontal broad frame struts (62) and the vertical profiled frame elements (54) of the vertical frames (52) are fixedly connected with each other in the corner areas (See Figure 1).

29. As for Claim 27, as best understood, Jancesek is cited for further teaching the cabinet rack is formed of an identical bottom frame (44a-d) and an identical top frame (42a-d) which face each other with protruding corner connectors (46's) and are connected with each other via the four vertical frame legs (40a) to form the cabinet rack.

30. Claims 3-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627), as applied to claim 1 above, and further in view of Fontana et al. (Fontana) (WO/01/47080).

31. As for Claim 3, as best understood, Jancesek, as modified by Whipps, is cited for teaching the horizontal broad struts (42a, 42c, 44a, 44c) and the horizontal depth struts (42b, 42d, 44b, 44d) of the switchgear cabinet rack form a solid bottom frame and a solid cover frame (See Figures 1 and 9).

32. Jancesek does not explicitly state the vertical frame legs with the corner connectors form a continuous exterior receiver in the corner areas of the bottom frame and the top frame.

33. Fontana is cited for teaching a switchgear cabinet having vertical frame legs (10) in conjunction with corner connectors (20) forming a continuous exterior receiver in the corner areas of the bottom frame and the top frame (See Figures 1 and 2).

34. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, so as to incorporate the corner connector, connecting configuration thereof, and the vertical frame legs with the corner connectors forming a continuous exterior receiver in the corner areas of the bottom frame and the top frame as taught by Fontana, in order to create an easily assembled switchgear cabinet made from interchangeable and easily replaceable parts and to create a switchgear cabinet that does not present a sharp edge to reduce the risk of injury.

35. As for Claim 4, as best understood, Jancesek is cited for further teaching the vertical profiled frame elements (54) have profiled base sides (See Figures 3A-B) including at least one row of fastening receivers (See Figures 3A-B) which terminate with the front faces of the horizontal broad vertical struts (62; See Figure 9), and the vertical profiled frame elements (54) further include lateral legs are beveled off on both sides of the profiled base side which are oriented to the longitudinal sides of the associated horizontal broad frame (62) struts of the vertical frames (52) and are connected.

36. As for Claim 5, as best understood, Jancesek is cited for further teaching at least one row of fastening receivers is cut in a uniform aligned graduation into the beveled

lateral legs of the vertical profiled frame elements (See Figure 3B; See the rows of fastening receivers on each bevel).

37. As for Claim 7, Jancesek is cited for further teaching the horizontal broad frame struts (62) and the vertical profiled frame elements (54) of the vertical frames (52) are fixedly connected with each other in the corner areas (See Figure 1).

38. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627), as applied to claim 7 above, and further in view of Ackermann (DE 19837184A1).

39. As for Claim 8, as best understood, Jancesek is cited for further teaching the two vertical frames (52's) are connectible by fastening receivers (See Figure 9, portions that extend into 42b, 42d, 44b, 44d) of the horizontal broad frame struts (54) with the facing tops of the horizontal depth struts (42b, 42d, 44b, 44d) of the cabinet rack at different distances from each other (See Figure 9; frames are capable of being spaced at different distances apart).

40. Jancesek, as modified by Whipps and Fontana, does not explicitly state cable guide openings on the horizontal broad frame struts of the vertical frames.

41. Ackermann is cited for teaching a switchgear cabinet having horizontal broad frame struts (6) of the vertical frames (6,7) have cable guide openings (See Figure 1, holes in center of 6). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps and Fontana, so as to include cable guide openings on the

horizontal broad frame struts of the vertical frames as taught by Ackermann, in order to route cables or wires up through the vertical frames.

42. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627) and Ackermann ('184), as applied to claim 8 above, and further in view of Marzec et al. (United States Patent No. 6,238,029).

43. As for Claim 9, as best understood, Jancesek, as modified by Whipps, Fontana, and Ackermann does not explicitly state cable introduction recesses in the base plates of the plate-shaped cover elements in the rack outside in a vertical direction from the horizontal broad frame struts of the vertical frames.

44. Marzec is cited for teaching a switchgear cabinet having cable introduction recesses (48) in base plates of the plate-shaped cover elements (19's) in the top of the rack.

45. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, Fontana, and Ackermann so as to include cable introduction recesses in the base plates of the plate-shaped cover elements in the rack outside in a vertical direction from the horizontal broad frame struts of the vertical frames as taught by Marzec in order to route cables through a completed enclosure.

46. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627), Ackermann ('184), and Marzec ('029),

as applied to claim 9 above, and further in view of Kostic (United States Patent No. 5,536,079).

47. As for Claim 10, Jancesek, as modified by Whipps, Fontana, Ackermann, and Marzec, does not explicitly state the fastening edges of the plate-shaped cover elements have connecting strips beveled toward an exterior on free edges and protrude beyond the base plate of the plate-shaped cover elements over the fastening edges and with the connecting strips form receivers for attaching lateral walls on the rack.

48. Kostic is cited for teaching a switchgear cabinet having fastening edges (26) of plate-shaped cover elements (4; See Figures 1, 3a-c, and Col. 3, Lines 15-31) have connecting strips (27) beveled toward an exterior on free edges and protrude beyond the base plate (See Figure 3c) of the plate-shaped cover elements (4) over the fastening edges (26) and with the connecting strips (27) form receivers for attaching lateral walls on the rack (Col. 3, Lines 15-31).

49. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, Fontana, Ackermann, and Marzec, so as to include fastening edges of the plate-shaped cover elements have connecting strips beveled toward an exterior on free edges and protrude beyond the base plate of the plate-shaped cover elements over the fastening edges and with the connecting strips form receivers for attaching lateral walls on the rack as taught by Kostic in order to attach walls to the cabinet outside of the plane of the frame to allow for a greater space to place equipment inside of the cabinet.

50. As for Claim 11, as best understood, Jancesek, as modified by Whipps, Fontana, Ackermann, Marzec, and Kostic, does not explicitly state the base plates of the plate-shaped cover elements protrude at the sides extending perpendicularly with respect to the fastening edges and have bevels, on which a cabinet door is connected with a hinge and lockable, and a rear wall is fastened thereto.

51. Whipps is cited for further teaching the base plate of the cover element (80) protrude at the sides extending perpendicularly with respect to the fastening edges (82) and have a bevels (96; See Figure 1), on which a cabinet door (30) is connected with a hinge and lockable, and a rear wall (26) fastened on the rack.

52. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, Fontana, Ackermann, and Marzec, so as to form the base plates of the plate-shaped cover elements protruding at the sides extending perpendicularly with respect to the fastening edges and have bevels, on which a cabinet door is connected with a hinge and lockable, and a rear wall is fastened thereto, as further taught by Whipps, in order to mount the door on the upper and lower covers to more efficiently support the door

53. It also would have been obvious to substitute the bottom cover for a top cover in order to save money by only manufacturing one cover. Also, it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *In re Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

54. As for Claim 12, Jancesek, as modified by Whipps, Fontana, Ackermann, Marzec, and Kostic, does not explicitly state base plates of the plate-shaped cover elements have a center opening and fastening bores in the corner areas.

55. Kostic is cited for further teaching base plates of the plate-shaped cover elements (4) have a center opening (13) and fastening bores (12) in the corner areas (See Figure 1).

56. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, Fontana, Ackermann, Marzec, and Kostic, so as to include a center opening and fastening bores in the corner areas of the base plates of the plate-shaped cover elements as further taught by Kostic in order to allow air to pass into the cabinet and electronic equipment to be fastened to the cover.

57. As for Claim 13, as best understood, Jancesek is cited for further teaching the cabinet rack is formed of the bottom frame (44a-d) and an the top frame (42a-d) which face each other are connected via the four vertical frame legs (40a) positioned between corner connectors (46's) of each of the bottom frame and corner connectors of the top frame to form the cabinet rack.

58. As for Claim 14, as best understood, Jancesek, as modified by Whipps, Fontana, Ackermann, Marzec, and Kostic, does not explicitly state the vertical frame legs of the cabinet rack have a profiled element with a plug-in connection for a plug-in element of the corner connectors, wherein with an exterior contour the profiled element forms the

outer receptacle which is symmetrical with respect to a diagonal plane of the bottom frame, and the top frame.

59. Fontana is cited for further teaching the vertical frame legs (10) of the cabinet rack have a profiled element with a plug-in connection (See Figure 2) for a plug-in element (22) of the corner connectors (20), wherein with an exterior contour the profiled element forms the outer receptacle (See Figure 2; formed in between element 6's) which is symmetrical with respect to a diagonal plane of the bottom frame, and the top frame.

60. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, Fontana, Ackermann, Marzec, and Kostic, so as to include the vertical frame legs of the cabinet rack having a profiled element with a plug-in connection for a plug-in element of the corner connectors, wherein with an exterior contour the profiled element forms the outer receptacle which is symmetrical with respect to a diagonal plane of the bottom frame, and the top frame as further taught by Fontana in order to form a simple plug-in connection for the corner joint of the cabinet that limits the potential danger of a sharp vertical edge.

61. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627), as applied to claim 1 above, and further in view of Ackermann ('184).

62. As for Claim 26, as best understood, Jancesek is cited for further teaching the two vertical frames (52's) are connectible by fastening receivers (See Figure 9, portions that extend into 42b, 42d, 44b, 44d) of the horizontal broad frame struts (54) with the facing tops of the horizontal depth struts (42b, 42d, 44b, 44d) of the cabinet rack at different distances from each other (See Figure 9; frames are capable of being spaced at different distances apart).

63. Jancesek, as modified by Whipps, does not explicitly state cable guide openings on the horizontal broad frame struts of the vertical frames.

64. Ackermann is cited for teaching a switchgear cabinet having horizontal broad frame struts (6) of the vertical frames (6,7) have cable guide openings (See Figure 1, holes in center of 6). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, so as to include cable guide openings on the horizontal broad frame struts of the vertical frames as taught by Ackermann, in order to route cables or wires up through the vertical frames.

65. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627), as applied to claim 1 above, and further in view of Hobday ('803).

66. As for Claim 28, as best understood, Jancesek, as modified by Whipps not explicitly state the cabinet door receives hinge elements with hinge bolts, which can be inserted into bearing receivers of the plate-shaped cover elements of the rack in the

corner areas of the hinge side of the cabinet door, and the hinge bolts are adjustable in an axially limited manner in the hinge elements and can be fixed on the bevel of the plate-shaped cover elements against shifting, at least in the a position in which they are engaged with one of a facing bearing receiver and a bearing bushing.

67. Hobday is cited for teaching a switchgear cabinet having a cabinet door (30) which receives hinge elements with hinge bolts (31), which can be inserted into bearing receivers (32) of plate-shaped cover elements (5, 6) of the rack in the corner areas (See Figure 1) of the hinge side of the cabinet door (30), and the hinge bolts (31) are adjustable in an axially limited manner in the hinge elements and can be fixed on the bevel (See Figure 1) of the plate-shaped cover elements (5, 6) against shifting, at least in the a position in which they are engaged with a facing bearing receiver (32) (See Page 10, Paragraph 5, Lines 3-7).

68. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps, so as to include the cabinet door having a beveled edge receive hinge elements with hinge bolts, which can be inserted into bearing receivers of the plate-shaped cover elements of the rack in the corner areas of the hinge side of the cabinet door, and the hinge bolts are adjustable in an axially limited manner in the hinge elements and can be fixed on the bevel of the plate-shaped cover elements against shifting, at least in the a position in which they are engaged with a facing bearing receiver as taught by Hobday, in order to create a simple hinge for the cabinet door that does not require a separate hinge mechanism.

69. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290), as modified by Whipps ('627), as applied to claim 1 above, and further in view of French (United States Patent No. 4,579,400).

70. As for Claim 30, as best understood, Jancesek, as modified by Whipps, does not explicitly state bearing bushes are inserted into the bearing receivers in the bevels of the plate-shaped cover elements.

71. French is cited for teaching a switchgear cabinet having bearing bushes (80's) inserted into bearing receivers (61, 62) in bevels (58) of plate-shaped cover elements (16, 18) (See Figures 3, 5, and 10).

72. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps so as to include bearing bushes inserted into bearing receivers in the bevels of the plate-shaped cover elements as taught by French in order to smoothly rotate the door on the cover element.

73. Claim 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek, as modified by Whipps, as applied to claim 1 above, and further in view of Kostic.

74. As for Claim 31, Jancesek, as modified by Whipps does not explicitly state a lock side of the cabinet door has displaceable locking bars which are shifted one of manually and by a rod closing device and are insertable into one of the bearing receivers and the

bearing bushes of the bevels of the plate-shaped cover elements of the rack, and are removable.

75. Kostic is cited for teaching a switchgear cabinet having a pivotally attached cabinet frame (5) having displaceable locking bars which are shifted manually and are removable (See Col. 2, Lines 25-34).

76. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek, as modified by Whipps so as to include a lock side of the cabinet door having displaceable locking bars which are shifted manually and are removable as taught by Kostic, in order to selectively lock the doors.

77. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jancesek ('290) in view of Hobday ('803).

78. For the purposes of this examination, the position is taken that Lines 13 and 14 of the claim refer to the (intended use) configuration wherein the vertical frames are connected to the cabinet rack and Lines 15-18 refer to the alternative (intended use) configuration wherein the vertical frames are connected to the plate-shaped cover elements.

79. As for Claim 32, as best understood, Jancesek is cited for teaching a switchgear cabinet, comprising: a cabinet rack including four horizontal broad struts (42a, 42c, 44a, 44c), four horizontal depth struts (42b, 42d, 44b, 44d), and four vertical frame legs (40a-d), each of a preset width, a preset depth and a preset height, two vertical frames (52's;

See Figure 9) each including two horizontal broad frame struts (62) and two vertical profiled frame elements (54) installable in a cabinet rack (See Figure 9) and each connectible with the horizontal depth struts (42b, 42d, 44b, 44d), cover elements (28, 30) including a bottom element (30) and a top element (28) and at least one cabinet door (24) beveled on a circumference thereof and hingedly attached on one of the cover elements (28,30).

80. Jancesek does not explicitly state the cover elements including a bottom element and a top element connectible with two spaced-apart vertical frames to form an independent rack.

81. Hobday is cited for teaching a switchgear cabinet having cover elements (5, 6) including a bottom element (5) and a top element (6) connectible with two spaced-apart vertical frames (2a, 3, 2b, 4 and 2c, 3, 2d, 4) to form an independent rack (See Figure 1).

82. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the switchgear cabinet of Jancesek so as to form the switchgear cabinet into a configuration having the cover elements including a bottom element and a top element connecting with two spaced-apart of the vertical frames to form an independent rack as taught by Hobday, as this configuration would be of a lesser cost and suitable for cabinet of lesser size and a lesser number of internal components.

***Allowable Subject Matter***

83. Claims 15-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

84. The previous U.S.C. 112 1<sup>st</sup> and 2<sup>nd</sup> paragraph rejections have been withdrawn in light of Applicant's amendment.

85. Applicant's arguments filed January 21, 2010 have been fully considered but they are not persuasive.

86. While it is understood that Applicant's kit can be used in two different ways, for the purposes of the above rejection, the position is taken that the claims refer to each configuration in the alternative (as an intended use). Therefore, the above rejection meets the limitations of the claims as it does refer to one of the configurations alternatively claimed in Claims 1 and 32. Should Applicant desire to limit any of the dependent claims to a specific configuration, that specific configuration must be positively recited and the configuration further limited. However, even if this were the case, it should be noted that for purposes of examination, the independent claim from which a further limiting (specifying a particular configuration) dependent claim depends, would still refer to the configurations in the alternative unless the independent claim is amended to explicitly define a specific configuration.

87. Further, it should be noted that Jancesek ('290) discloses a switchgear cabinet rack with upper and lower frame struts and Whipps ('627) discloses an independent rack system.

88. As for Applicant's argument that neither the Jancesek patent nor the Whips patent teach or suggest a "dual use kit" found on page 24 of the response, as stated in the above rejections, the appropriate structure of the switchgear cabinet kit is taught by these references and therefore is capable of being seen or used as a "dual use kit". It should be noted that the claims are drawn to "a kit for producing frame structures for switchgear cabinets", and not necessarily a "dual use kit".

### ***Conclusion***

89. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nicolai et al. disclose a switchgear cabinet kit.

90. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL CALABRESE whose telephone number is (571)270-7862. The examiner can normally be reached on Monday - Thursday 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C./  
Examiner, Art Unit 3637

/Darnell M Jayne/  
Supervisory Patent Examiner, Art  
Unit 3637